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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT SHAPIRO,

Petitioner,

Civil Action No.
CV-97-2827 (DGT)

- against -

ORDER OF DISMISSAL

UNITED STATES OF AMERICA,

Respondent.

FILED
IN CLERK'S OFFICE

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
NOV 12 1998
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TRAGER, J.

In this § 2255 action, petitioner Robert Shapiro alleges that he received ineffective assistance of counsel. Subsequently, the petition was amended to include a second claim that the court failed to include a lesser included offense charge when requested by the petitioner.¹

With respect to the ineffective assistance of counsel claim, petitioner claims that he turned down a plea bargain with an estimated Guideline range of thirty-three to forty-one months in reliance on his counsel's advice that he faced a five-year statutory maximum. As the record demonstrates, this claim is demonstrably false. The plea bargain which petitioner turned down (Govt's Ltr. Opp., Exhibit C) clearly demonstrates that the two charges which he then faced had a maximum exposure of ten years. At that point in time, there was no wire fraud charge pending against the petitioner. It was only after the petitioner had rejected the

¹This amended claim was submitted on June 9, 1997, several months before the government answered petitioner's ineffective assistance of counsel claim. It now appears that petitioner failed to mail a copy of the amended claim to the government. However, the government has now filed a response to this supplemental claim.

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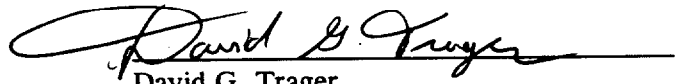
plea bargain that the government superseded, adding a wire fraud count which potentially increased the petitioner's exposure to up to thirty years. It is, therefore, clear that petitioner's ineffective assistance of counsel is demonstrably without merit.

With respect to petitioner's claim that he was entitled to a lesser included offense charge, the court would simply point out that only one of the charges with which petitioner was charged, namely, fraud by wire transmission (18 U.S.C. § 1343), possession of a stolen check (18 U.S.C. § 2113(c)), and sale of stolen goods (18 U.S.C. § 2315), provides for any lesser included offenses. Possession of a stolen check (18 U.S.C. § 2113(c)) has a lesser included offense if the property was worth less than \$1,000. However, as the stolen check here far exceeded that amount, a lesser included offense would have been inappropriate, even if requested. Accordingly, this claim is also meritless.

Accordingly, the petition is denied. Petitioner's motion for appointed counsel is denied as moot. Petitioner's Motion for Summary Relief, which appears to be a request for default judgment against the government, is also denied. A certificate of appealability will not issue since petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253, as amended by the Antiterrorism and Effective Death Penalty Act of 1996. The Clerk of the Court is directed to close the case.

Dated: Brooklyn, New York
November 10, 1998

SO ORDERED:


David G. Trager
United States District Judge

TO:

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